## REMARKS

Claims 1-11 are pending. Claims 1, 5, 6 and 9 have been amended. No new matter has been added. Support for the amendment is found at paragraph [0052] of the published application, which defines the term "treatment" as encompassing prophylactic as well as therapeutic treatments. Reconsideration of the amended claims is respectfully requested.

Restriction

Applicants elect, with traverse, to prosecute Group I (claims 1-5), drawn to a method of preventing Type I diabetes with administering a pharmaceutically effective amount of a p38 mitogen activate protein (MAP) kinase inhibitor sufficient to prevent onset of Type I diabetes, classified in class 514, subclasses 254.09 and 866. In the event that the requirement is made final, Applicants expressly reserve the right under 35 U.S.C. § 121 to file a divisional application directed to the non-elected subject matter during the pendency of this application, or an application claiming priority from this application.

Traversal

Applicants traverse the restriction requirement imposed by the Office on the grounds that the subject matter in the pending claims all fall within the scope of and are therefore linked by claim 1. Claim 1 has been amended to recite a method of treating diabetes to clarify its generic nature. Independent claims 6 and 9 have been amended to depend directly from claim 1 to emphasize their relationship to the generic subject matter of that independent claim.

"There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; and (B) There would be a serious burden on the examiner if restriction is not required." M.P.E.P. § 803. The M.P.E.P. also provides that where an application includes claims directed to different species that fall within the scope of a generic claim, "an allowable generic claim may link a reasonable number of species embraced thereby." M.P.E.P. § 806.04; 37 C.F.R. § 1.146.

Here, while the species of claims 6 and 9 may be independent or distinct, there is no serious burden placed on the examiner if restriction is not required. This can be seen from the fact that all

the claims have been determined to fall within class 514 (Drug, Bio-Affecting and Body Treating Compositions). Additionally, all the claims have been assigned to subclass 254.09 (Indole ring system (including hydrogenated) attached directly or indirectly to the piperazine ring by nonionic bonding), while the claims of group I and group III have been determined to also fall into subclasses 866 (Diabetes) and 909 (Obesity), respectively. The close relationship of the claimed subject matter readily permits the examiner to search all the claims without creating a serious burden.

Moreover, the subject matter of claims 6 and 9 represent species of the genus recited in claim 1. As discussed in 37 C.F.R. § 1.146, a reasonable number of species may be included in a restriction requirement. Applicants submit that examination of just two species, reduction of blood sugar and weight modulation in conjunction with the generic treatment method of claim 1 does not constitute a serious burden on the examiner. As such, Applicants request reconsideration of the restriction requirement and examination of all the subject matter of the pending claims.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 219002032800. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

By _____
James J. Mullen III, Ph.D.
Registration No.: 44,957
MORRISON & FOERSTER LLP
12531 High Bluff Drive
Suite 100
San Diego, California 92130-2040
(858) 720-7940

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